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JURISDICTIONAL STATEMENT

This is an appeal from a judgment by the Circuit Court of St. Louis County on January 29, 2003 granting the Normandy Education Association's Motion for Summary Judgment that declared Appellant in violation of Section 165.015 RSMo., and ordered Normandy School District to: (1) pay penalty amounts, per capita, to certain certificated staff; (2) make retirement contributions on behalf of these staff members; and (3) withhold taxes and pay pre-judgment interest on the penalty amount.

Jurisdiction of this Court is invoked under the provisions of Article 5, Section 3, Constitution of Missouri, which reposes in this Court general appellate jurisdiction in all cases except those within the exclusive jurisdiction of the Supreme Court. This case presents none of the issues reserved to the exclusive appellate jurisdiction of the Supreme Court of Missouri set forth in Article 5, Section 3. Therefore jurisdiction of this appeal is in the Missouri Court of Appeals, Eastern District.

STATEMENT OF FACTS

Chapter 165 of the Revised Missouri Statutes sets forth statutory requirements for Missouri public school district expenditures. Section 165.016 of that Chapter, also known as the “Salary Compliance Act”, requires public school districts to expend a minimum percentage of their current operating costs on compensation for certificated teachers and administrative staff. The minimum percentage for each district is defined as the average percentage of current operating costs that the district expended on certificated salaries during two “Base Years,” 1991-92 and 1992-93. The statute requires districts to spend no less than 3 percent less than their “Base Year Certificated Salary Percentage” during the 1994-95 and 1995-96 school years, and no less than 2 percent less than their “Base Year Certificated Salary Percentage” during the 1996/97 school year.¹

A district’s failure to comply with the salary compliance results in a penalty. The district is required to pay a monetary penalty to certified staff in the year following notification of non-compliance. The penalty is 110 percent of the additional amount that should have been paid to certificated staff during the year of non-compliance in addition to the minimum amount of

¹ A copy of this statute is provided as Exhibit 1 for the Court’s convenience.

compensation otherwise owed to certificated staff under this Act.

The Act also defines two ways in which a district can avoid the above described penalty. Paragraph 4 of Section 165.016 permits a school district to apply to the State Board of Education for a waiver of the Act's requirements after showing its reason(s) for non-compliance. In addition, a district may apply to the State Board for a one-time revision of the Base Year Salary Percentage after showing its reason(s) for the revision.

The Normandy School District's original Base Year Certificated Salary Percentage was determined to be 72.56 percent, which was determined by averaging the district's percentage of operating costs for tuition, teacher retirement and compensation of certificated staff for the 1991-92 and 1992-93 school years (Appendix, p. 367).

On October 8, 1996, the Missouri Department of Elementary and Secondary Education ("DESE") notified the Normandy School District that its Certificated Salary Percentage for the 1994-95 school year was 69.38 percent, which was less than the Base Year Certificated Salary Percentage (72.56 percent) minus 3 percent (Appendix, p. 397). On December 10, 1996, the Normandy School District requested that DESE exclude a National Science Foundation Grant from the calculation of its Certificated Salary Percentage for

1994-95 (Appendix, p. 438). By letter dated January 23, 1997, Commissioner of Education Robert Bartman granted the Normandy School District's request to exclude this grant from the calculation of its Certificated Salary Percentage for 1994-95, resulting in a Certificated Salary Percentage for 1994-95 of 69.83 percent, which was within 3 percentage points of the Base Year Certificated Salary Percentage of 72.56 percent (Appendix, p. 438).

On May 7, 1997, DESE notified the Normandy School District that its Certificated Salary Percentage for the 1995-96 school year was 68.21 percent, which was less than the Base year Certificated Salary Percentage (72.56 percent) minus 3 percent (Appendix, p. 408).

On March 28, 1998, DESE notified the Normandy School District that its Certificated Salary Percentage for the 1996-97 school year was 66.36 percent, which was less than the Base Year Certificated Salary Percentage (72.65 percent) minus 2 percent (Appendix, p. 420).

On May 19, 1998, the Normandy School District requested that the State Board of Education grant the district a Base Year Revision due to its financial condition during the base years of 1991-92 and 1992-93 school years (Appendix, p. 439). In addition, the District requested the State Board grant it a waiver for the 1996-97 school year due to instability of leadership in the

business office (Appendix, p. 444). On November 19, 1998, the District clarified that it was seeking a Base Year Revision retroactive to the time the Act first went into effect and requested waivers for the 1995-96 and 1997-98 (Appendix, p. 427). The district also revised its waiver request for the 1996-97 school year.

On September 8, 1998 - - after the Normandy School District's original request for a Base Year Revision on May 19, 1998, but before the District's clarified request on November 19, 1998 - - Respondents filed their Petition for Declaratory Judgment against the Normandy School District, alleging the District owed certain teachers a penalty for non-compliance with the Salary Compliance Act during the 1994-95, 1995-96 and 1996-97 school years (Appendix, p. 10). No decision from the State Board on the District's request for a Base Year Revision had been issued at the time Respondents filed their petition.

On December 18, 1998, Normandy School District filed a Motion for Summary Judgment on all Counts of the Petition, claiming: (1) Respondents had failed to join the State Board and DESE as indispensable parties; (2) the District was in compliance with the Salary Compliance Act for the 1994-95 school year after its National Science Foundation grant was excluded from the

calculation, and had been so notified by DESE; and (3) the claims were not ripe and the Respondents had not exhausted their administrative remedies because the State Board had not issued a decision on the District's application for a Base Year Revision and waivers (Appendix, p. 61). On April 15, 1999, the State Board granted Normandy School District a Base Year Revision of 69.59 percent (Appendix, p. 456).

On May 24, 1999, the Circuit Court granted the District's Motion for Summary Judgment (Appendix, p. 290). On June 4, 1999, Respondents moved for relief from the Order and for a new trial (Appendix, p. 291). On August 16, 1999, the Circuit Court granted Respondent's motion for the limited purpose of allowing additional briefing and oral argument on the District's Motion for Summary Judgment (Appendix, p. 308). In addition, the Court verbally granted Respondents' leave to amend their Petition for very limited purposes. Respondents' Leave to file their First Amended Petition was denied because it went beyond the scope of those purposes (Appendix, p. 308). Respondents filed their Second Amended Petition for Declaratory Judgment on August 30, 1999 (Appendix, p. 319). Respondents' supplemental brief in opposition to the Normandy School District Motion for Summary Judgment was filed on August 30, 1999 (Appendix, p. 309). The District's response to the supplemental brief

was filed on September 8, 1999 (Appendix, p. 326) and the District's supplemental memorandum supporting its Motion for Summary Judgment was filed on October 15, 1999 (Appendix, p. 339).

On January 6, 2000, Respondents moved to stay the matter pending a decision from the Missouri Court of Appeals in the case of *Missouri National Education Association v. Missouri State Board of Education*, 34 S.W.3d 266 (Mo.App.W.D., 2000), an action for administrative review of non-contested decisions by the State Board to grant Base Year Revisions and Waivers to 29 school districts, including the Normandy School District - and whether Base Year Revisions apply retroactively to forgive past due penalties (Appendix, p. 343). The Circuit Court granted Respondents motion to stay the current case for 18 months or upon application for reinstatement (Appendix, p. 343).

Respondents filed their Motion to Reopen the Case and for Summary Judgment on September 25, 2002, more than 32 months after the Court granted Respondents motion to stay the case and 21 months after the Court of Appeals issued their decision in the *Missouri National Education Association* case (Appendix, p. 344). The Normandy School District filed its response to this motion on December 23, 2002 (Appendix, p. 505) and Respondents filed their reply to the District's response on January 6, 2003 (Appendix, p. 508).

Arguments were heard on this Motion on January 7, 2003, with both parties filing a Proposed Order and Judgment (Appendix, pp. 541, 537). The Court signed Respondent's Proposed Order and Judgment on January 29, 2003, granting their Motion to Reopen the Case and for Summary Judgment (Appendix, p. 541).

The Normandy School District filed its Notice of Appeal on February 28, 2003 (Appendix, p. 544).

POINTS RELIED ON

I. THE TRIAL COURT ERRED IN FINDING THE NORMANDY SCHOOL DISTRICT OWED A PENALTY OF \$51,824.54 FOR NON-COMPLIANCE WITH SECTION 165.016 RSMO DURING THE 1994-95 SCHOOL YEAR WHICH WAS PAYABLE DURING THE 1997-98 SCHOOL YEAR BECAUSE THE NORMANDY SCHOOL DISTRICT TIMELY REQUESTED THE MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION EXCLUDE A GRANT AND TO RECALCULATE ITS CERTIFICATED SALARY PERCENTAGE FOR THE 1994-95 SCHOOL YEAR AND THE MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION DID RECALCULATE THE DISTRICT'S CERTIFICATED SALARY PERCENTAGE AND FOUND NORMANDY SCHOOL DISTRICT TO BE IN COMPLIANCE WITH SECTION 165.016 RSMO. THEREFORE, THE DISTRICT WAS NOT REQUIRED TO PAY A PENALTY DURING THE 1997-98 SCHOOL YEAR.

Section 165.016 RSMo. (2001)

Knob Noster Education Association v. Knob Noster R-VIII School District,

II. THE TRIAL COURT ERRED IN FINDING THE NORMANDY SCHOOL DISTRICT OWED A PENALTY OF \$415,925.40 FOR NON-COMPLIANCE WITH SECTION 165.016 RSMO DURING THE 1995-96 SCHOOL YEAR WHICH WAS PAYABLE DURING THE 1997-98 SCHOOL YEAR AND A PENALTY OF \$390,812.16 FOR NON-COMPLIANCE WITH SECTION 165.016 RSMO DURING THE 1996-97 SCHOOL YEAR WHICH WAS PAYABLE DURING THE 1998-99 SCHOOL YEAR BECAUSE THE NORMANDY SCHOOL DISTRICT PROPERLY REQUESTED A BASE YEAR REVISION AND A WAIVER TO APPLY RETROACTIVELY ACCORDING TO STANDARD PRACTICE AT THE TIME OF THE REQUESTS. THEREFORE, THE DISTRICT WAS NOT NOTIFIED OF ANY NON-COMPLIANCE UNTIL THE CONCLUSION OF ANCILLARY ACTION IN THE MISSOURI COURT OF APPEALS IN DECEMBER OF 2000.

A. Normandy School District properly requested a Base Year Revision of its Certified Salary Percentage to be applied

retroactively.

Section 165.016 RSMo. (2001)

Missouri Education Association v. Missouri State Board of Education, 34

S.W.3d 266 (Mo.App.W.D., 2000)

Missouri Education Association v. Missouri State Board of Education,

CV198-1226CC (10/5/99)

B. The court cases clarifying Section 165.016.6 RSMo. did not serve as a retroactive “trigger” to determine the years in which the penalties were due.

Section 165.016 RSMo. (2001)

Missouri Education Association v. Missouri State Board of Education, 34

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C. The ruling that the exclusion of the National Science Grant was improper when DESE calculated the District’s 1994-95 Salary Compliance Percentage did not require a penalty until the 2002-03 school year.

Knob Noster Education Association v. Knob Noster R-VIII School District,

CV499-700CC (12/20/01)

D. Calculation of penalties, assuming that the court cases constituted a notice of violation.

Knob Noster Education Association v. Knob Noster R-VIII School District,
CV499-700CC (12/20/01)

Section 165.106 RSMo.

Missouri Education Association v. Missouri State Board of Education, 34
S.W.3d 266 (Mo.App.W.D., 2000)

III. THE TRIAL COURT ERRED IN FINDING THAT ANY PENALTY OWED BY THE NORMANDY SCHOOL DISTRICT WAS TO BE PAID ON A PER CAPITA BASIS TO EVERY CERTIFICATED TEACHER AND BUILDING-LEVEL ADMINISTRATOR WHO WORKED FOR THE DISTRICT DURING THE YEARS THE PENALTIES WOULD HAVE BEEN PAID IF THE DISTRICT HAD BEEN TIMELY INFORMED BY DESE THAT A PENALTY WAS REQUIRED BECAUSE THE NORMANDY SCHOOL DISTRICT PROPERLY PAID ANY PENALTY DUE CERTIFICATED TEACHERS BY INCREASING SALARIES IN AN AMOUNT IN EXCESS OF THE PENALTY DURING THE 2000-01 AND 2001-02

SCHOOL YEARS. NORMANDY SCHOOL DISTRICT PROPERLY USED THE “FIRE” METHOD TO SHOW COMPLIANCE WITH THE SALARY COMPLIANCE ACT.

- A. Normandy School District has complied with Section 165.016 RSMo. regarding payment of alleged penalties.**

Section 165.016 RSMo. (2001)

Knob Noster Education Association v. Knob Noster R-VIII School District,
WD61093 (Mo.App.W.D., 2003)

- B. The Normandy School District properly used the “FIRE” method to show compliance with the Salary Compliance Act for the school years in question.**

Section 165.016 RSMo. (2001)

Knob Noster Education Association v. Knob Noster R-VIII School District,
WD61093 (Mo.App.W.D., 2003)

- IV. THE TRIAL COURT ERRED IN FINDING NORMANDY SCHOOL DISTRICT WAS REQUIRED TO MAKE TAX WITHHOLDINGS, CONTRIBUTIONS TO THE PUBLIC SCHOOL RETIREMENT SYSTEM, AND PAY PRE-JUDGMENT INTEREST FOR EACH OF**

THE RECIPIENTS DESCRIBED ABOVE BECAUSE SECTION 165.016 RSMO DOES NOT REQUIRE A DISTRICT TO PAY PENALTIES DIRECTLY TO INDIVIDUAL CERTIFICATED EMPLOYEES, MAKE TAX WITHHOLDINGS, MAKE RETIREMENT CONTRIBUTIONS, OR PAY PRE-JUDGMENT INTEREST BASED ON THE PENALTY AMOUNT.

A. Respondents are not entitled to tax withholdings, contributions to the Public School Retirement System and pre-judgment interest because these are remedies not prayed for in their Petition.

Section 165.016 RSMo. (2001)

B. No provision for pre-judgment interest is included in Section 165.016 RSMo. The Salary Compliance Act does not require penalties to be paid directly to certain certificated teachers and administrators.

Section 165.016 RSMo. (2001)

Missouri Education Association v. Missouri State Board of Education,
CV198-1226CC (10/5/99)

Missouri Education Association v. Missouri State Board of Education, 34
S.W.3d 266 (Mo.App.W.D., 2000)

ARGUMENT

Standard of Review

Under the summary judgment standard, the Court reviews the record in the light most favorable to the party against whom the judgment was entered, according the non-movant the benefit of all reasonable inferences from the record. *Andes v. Albano*, 853 S.W.2d 936, 940 (Mo.banc, 1993).

The Court's review is essentially de novo. The criteria on appeal for testing the propriety of summary judgment are no different from those which should be employed by the trial court to determine the propriety of sustaining the motion initially. . . . The propriety of summary judgment is purely an issue of law. As the trial court's judgment is founded on the record submitted and the law, an appellate court need not defer to the trial court's order granting summary judgment. *ITT Commercial Finance v. Mid-Am. Marine*, 854 S.W.2d 371, 376 (Mo.banc, 1993) (citations omitted).

I.

THE TRIAL COURT ERRED IN FINDING THE NORMANDY SCHOOL DISTRICT OWED A PENALTY OF \$51,824.54 FOR NON-COMPLIANCE WITH SECTION 165.016 RSMO DURING THE 1994-95 SCHOOL YEAR WHICH WAS PAYABLE DURING THE 1997-98 SCHOOL YEAR

BECAUSE THE NORMANDY SCHOOL DISTRICT TIMELY REQUESTED THE MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION EXCLUDE A GRANT AND TO RECALCULATE ITS CERTIFICATED SALARY PERCENTAGE FOR THE 1994-95 SCHOOL YEAR AND THE MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION DID RECALCULATE THE DISTRICT'S CERTIFICATED SALARY PERCENTAGE AND FOUND NORMANDY SCHOOL DISTRICT TO BE IN COMPLIANCE WITH SECTION 165.016 RSMO. THEREFORE, THE DISTRICT WAS NOT REQUIRED TO PAY A PENALTY DURING THE 1997-98 SCHOOL YEAR.

The Normandy School District was notified on October 8, 1996 by the Missouri Department of Elementary and Secondary Education ("DESE") that the District's Certificated Salary Percentage for the 1994-95 school year was 69.38% (Appendix, p. 397). In order to be in compliance with Section 165.016 RSMo., the District's Certificated Salary Percentage had to be 69.56% or greater (72.56 % (Base Year Percentage) - 3% = 69.56%).

During the 1994-95 school year, the Normandy School District received a one-time National Science Foundation Grant. The District believed that the

inclusion of this grant unfairly portrayed the District's expenditures, and therefore, requested that DESE exclude this grant from its calculation. The District requested DESE recalculate its Certified Salary Percentage by letter dated December 10, 1996, just two (2) months after receiving the original percentage and well before any penalty payments were required (Appendix, p. 438).

In a letter dated January 23, 1997, one (1) month after the District's request, DESE granted Normandy School District's request to exclude the grant from its 1994-95 Certified Salary percentage calculation (Appendix, p. 438). The District's revised Certified Salary Percentage was 69.38%, which was within the three (3) percentage points of the District's Base Year Certified Salary Percentage of 72.56%. Normandy School District was deemed in compliance with the Salary Compliance Act (§165.016 RSMo.). At no time has the District been notified by DESE that it is not in compliance for the 1994-95 school year.

Respondents relied upon a Cole County Circuit Court decision in *Knob Noster Education Association v. Knob Noster R-VIII School District*, CV499-700CC (12/20/01) (Appendix, p. 457), which held that DESE did not have the authority to exclude grants from its calculation of the Knob Noster School District's salary compliance figures. That case has now been decided by the Western District Court of Appeals, WD61093 (Mo.App.W.D., 2003). The

Normandy School District was not a party to this action. At no time subsequent to the Cole County Circuit Court decision did DESE notify the Normandy School District they were out of compliance and therefore owed a penalty of \$51,824.54. Should DESE so notify the District, the penalty would not be considered payable until the school year following such a notification (§165.016.6). The Salary Compliance Act does not require a school district to educate itself regarding all Circuit Court decisions and then self-assess any penalty by applying a Court decision to its circumstances. Rather, the statute clearly states that DESE will notify a district of any non-compliance.

Respondents further claim that the Normandy School District should have paid the alleged \$51,824.54 penalty amount during the 1997-98 school year. This claim is made despite the fact DESE had declared the District in compliance and at that time no Circuit Court decision had been issued suggesting DESE did not have the authority to exclude grants from a Salary Compliance Percentage calculation.

Based on the arguments presented, this Court should reverse the trial court's finding that the Normandy School District owes a penalty of \$51,824.54 for non-compliance with §165.016 RSMo. during the 1994-95 school year that was payable during the 1997-98 school year.

II.

THE TRIAL COURT ERRED IN FINDING THE NORMANDY SCHOOL DISTRICT OWED A PENALTY OF \$415,925.40 FOR NON-COMPLIANCE WITH SECTION 165.016 RSMO DURING THE 1995-96 SCHOOL YEAR WHICH WAS PAYABLE DURING THE 1997-98 SCHOOL YEAR AND A PENALTY OF \$390,812.16 FOR NON-COMPLIANCE WITH SECTION 165.016 RSMO DURING THE 1996-97 SCHOOL YEAR WHICH WAS PAYABLE DURING THE 1998-99 SCHOOL YEAR BECAUSE THE NORMANDY SCHOOL DISTRICT PROPERLY REQUESTED A BASE YEAR REVISION AND A WAIVER TO APPLY RETROACTIVELY ACCORDING TO STANDARD PRACTICE AT THE TIME OF THE REQUESTS. THEREFORE, THE DISTRICT WAS NOT NOTIFIED OF ANY NON-COMPLIANCE UNTIL THE CONCLUSION OF ANCILLARY OF ACTION IN THE MISSOURI COURT OF APPEALS IN DECEMBER OF 2000.

A.

Normandy School District properly requested a Base Year Revision of its Certified

Salary Percentage to be applied retroactively.

The Normandy School District was notified on May 7, 1997 by DESE that

the District's Certificated Salary Percentage for the 1995-96 school year was 68.21% (Appendix, p. 408). In order to be in compliance with Section 165.016 RSMo., the District's Certificated Salary Percentage had to be 69.56% or greater ($72.56\% \text{ (Base Year Percentage)} - 3\% = 69.56\%$). Normandy School District was determined by DESE to be out of compliance by 1.35%.

On March 28, 1998, DESE notified the Normandy School District that its Certificated Salary Percentage for the 1996-97 school year was 66.36% (Appendix, p. 420). In order to be in compliance with Section 165.016 RSMo., the District's Certificated Salary Percentage had to be 67.59% or greater ($72.56\% - 2\% = 70.56\%$). Normandy School District was determined by DESE to be out of compliance by 4.2%.

On May 19, 1998, the Normandy School District requested that the State Board of Education grant the district a Base Year Revision due to its financial condition during the base years of 1991-92 and 1992-93 school years (Appendix, p. 429). The District requested this revision to apply retroactively, as was clarified in its letter to the State Board dated November 19, 1998 (Appendix, p. 427). In addition, the Normandy School District requested waivers for any penalties due in previous years (Appendix, p. 427).

On April 15, 1999, the State Board granted Normandy School District's

Base Year Revision of 69.59% and applied that revision retroactively. The State Board granted the District's request for waivers and considered Normandy School District in compliance with Section 165.016 RSMo. In fact, at the time this case was stayed in the Circuit Court on January 6, 2000, the Normandy School District was informed by DESE that it was in compliance (Appendix, p. 456). A trial court in *Missouri National Education Association v. Missouri State Board of Education*, CV198-1227CC upheld the State Board's retroactive application of the District's Base Year Revision and grant of waivers on October 5, 1999 (Appendix, p. 468). The statute clearly states that any decision of the State Board regarding exemptions or revision "shall be final." §165.016.5 RSMo.

With the new Base Year Revision of 69.59%, the District's 1995-96 Salary Compliance Percentage needed to be 66.59% or greater (69.59% (Revised Base Year Percentage) - 3% = 66.59%). The District's Salary Compliance Percentage of 68.21% was therefore in compliance.

With the new Base Year Revision, the District's 1996-97 Salary Compliance Percentage needed to be 67.59% or greater (69.59% (Revised Base Year Percentage) - 2% = 67.59%). The District's Salary Compliance Percentage of 66.36% was not in compliance, however, Normandy School District was not required to pay any penalty since the State Board granted the District's waiver

request (Appendix, p. 456).

B.

The court cases clarifying Section 165.016.6 RSMo. did not serve as a retroactive “trigger” to determine the years in which the penalties were due.

Section 165.016.6 RSMo. states that DESE is the entity to determine whether a district is in compliance or in violation of this Act and to provide a “notice of violation” to the district. DESE has not sent a notice of violation to the Normandy School District indicating that the District is in violation of the Act subsequent to the State Board’s grant of the District’s Base Year Revision and waiver request (April 15, 1999). The ruling in *Missouri National Education Association v. Missouri State Board of Education*, 34 S.W.3d 266 (Mo.App.W.D., 2000) is not the “notice of violation” described in Section 165.016.6 RSMo.

In that case, the Court discussed the importance of the notice requirement and its effect on subsequent years as follows:

To expect a school district to file a request for an exemption or revision for the 1994-1995 school year in early 1996 before enactment of the statute or the first notice of violation would have been absurd. The earliest opportunity for a school district to request an exemption or revision for the

1994-1995 school year was after the enactment of the statute and notice of violation. *Id.* at 286, emphasis supplied.

The reason cited for the reversal as it applied to Normandy was that its application for the 1994-95 and 1995-96 school years was not filed at the earliest opportunity after the notice of violation. *Id.* at 285.

On December 26, 2000, the Western District Court of Appeals reversed a trial court decision upholding the action of the Missouri State Board of Education with respect to the Normandy School District “only to the extent that the judgment applies retroactively to the 1994-1995 and 1995-1996 school years.” *Id.* at 286. Since the Normandy School District was not a party to that action, the opinion by itself did not constitute the statutory notice required by Section 165.016.6 RSMo.

Assuming *arguendo* the Normandy School District was not in compliance with the Salary Compliance Act for the 1994-95, 1995-96 and 1996-97 school years, any penalty assessed would not be payable until “. . . the year following the notice of violation . . .” §165.016.6 RSMo. The penalties, therefore, would be payable as discussed below.

C.

The ruling that the exclusion of the National Science Grant was improper when DESE calculated the District’s 1994-95 Salary Compliance Percentage did not

require a penalty until the 2002-03 school year.

Respondents allege the Normandy School District owes a penalty of \$51,824.54, payable during the 1997-98 school year. The District was informed by DESE that the District's request to remove the National Science Grant was granted, and the District's Salary Compliance Percentage was adjusted, causing the District to be in compliance with the Act (Appendix, p. 438). Not until the Johnson County Circuit Court's decision in *Knob Noster Education Association v. Knob Noster School District*, CV499-700CC (Appendix, p. 457) on December 20, 2001 could the Normandy School District have any indication that DESE's decision to exclude the grant may not have been permissible. The Normandy School District was not a party to, and had no knowledge of, this action. The issue of excluding grants was not a part of the appeal of this decision heard in the Western District. See *Knob Noster Education Association v. Knob Noster R-VIII School District*, WD61093 (Mo.App.W.D., 2003).²

DESE has never informed the Normandy School District that an error was made and that a penalty for the 1994-95 school year was required. It is unreasonable to expect the Normandy School District to assess a penalty upon itself. Assuming, for sake of argument, that such an obligation was created upon

² A copy of this decision is provided as Exhibit 2 for the Court's convenience.

the Johnson Circuit Court’s finding, the earliest the District would “have notice” of its violation is December of 2001. Therefore, any penalty would not be assessed and payable until the 2002-03 school year, not the 1997-98 school year.

Even if the Court finds that the Normandy School District owes a penalty of \$51,824.54 to be paid during the 2002-03 school year, the District budgeted \$4,256,018.00 over and above the required \$33,413,818.00 Base Year Expenditure required in 2002-03 which is more than enough to satisfy the alleged penalty.³

D.

Calculation of penalties, assuming that the court cases
constituted a notice of violation.

1995-96:

Respondents allege the Normandy School District owes a penalty of \$415,925.40, payable during the 1997-98 school year. The Normandy School District was informed by the State Board that the District’s request to apply a Base

³ In *Knob Noster Education Association v. Knob Noster R-VIII School District* (*supra.*) the Court “harmonized” the provisions of §165.016.1 and §165.016.3 and found that a salary increase in a subsequent year “could be deemed to have satisfied the penalty provision of the statute” even if it was not specifically intended to satisfy a “penalty.”

Year Revision retroactively was granted, and the District's Base Year Percentage was adjusted, causing the District to be in compliance with the Act (Appendix, p. 438). Not until the Western District Court of Appeals of Missouri's decision in the *Missouri National Education Association v. Missouri State Board of Education*, 34 S.W.3d 266 (Mo.App.W.D., 2000) on December 26, 2000 could the Normandy School District have any indication that the State Board's decision to apply the Base Year Revision retroactively was not permissible. The Normandy School District was not a party to this action.

The Johnson County Circuit Court in *Knob Noster Education Association v. Knob Noster R-VIII School District*, CV499-700CC (Appendix, p. 457) held that the Base Year Revision granted to Knob Noster R-VIII School District on April 15, 1999 applied retroactively so as to forgive a portion of the penalty for non-compliance during the 1996-97 school year. This decision was entered on December 20, 2001, after the *Missouri National Education Association* decision.

Neither DESE nor the State Board has informed the Normandy School District that an error was made and that a penalty for the 1995-96 school year was required. The Normandy School District is not required to assess a penalty upon itself. Assuming, for sake of argument, that such an obligation was created upon the Western District Court of Appeals of Missouri's finding, the earliest the

District would “have notice” of its violation is December of 2000. Therefore, any penalty would not be assessed and payable until the 2001-02 school year, not the 1997-98 school year.

Should this Court find that the Normandy School District owed a penalty of \$415,925.40 to be paid during the 2001-02 school year, it would be offset by expenditures of \$1,737,293.52 for teachers salaries over and above the required \$32,262,671.89 Base Year Expenditure required which was more than enough to satisfy the alleged penalty (Appendix, p. 536).

1996-97:

Respondents allege the Normandy School District owes a penalty of \$390,812.16, payable during the 1998-99 school year. The Normandy School District was informed by the State Board that the District’s request for a Base Year Revision and waiver for any penalties due was granted, causing the District to be in compliance with the Act (Appendix, p. 438). The Western District Court of Appeals of Missouri’s decision in the *Missouri National Education Association v. Missouri State Board of Education*, 34 S.W.3d 266 (Mo.App.W.D., 2000) issued on December 26, 2000 permits the Base Year Revision requested by the Normandy School District to be applied retroactively to the 1997-98 school year. The Court does not address the matter of whether the State Board was correct to grant the

waiver of any penalties requested by the District.

Neither DESE nor the State Board has informed the Normandy School District that an error was made and that a penalty for the 1996-97 school year was required. The Normandy School District is again not required to assess a penalty upon itself. Assuming, for sake of argument, that such an obligation was created upon the Western District Court of Appeals of Missouri's finding, the earliest the District could "have notice" of its violation is December of 2000. Therefore, any penalty would not be assessed and payable until the 2001-02 school year, not the 1998-99 school year.

Should this Court find that the Normandy School District owes a penalty of \$390,812.16 to be paid during the 2001-02 school year, it would be offset by 2001-02 expenditures of \$1,737,293.52 over and above the required \$32,262,671.89 Base Year Expenditure required which was more than enough to satisfy the alleged penalty (p.536, Appendix).

Based on the arguments presented, this Court should reverse the trial court's finding that the Normandy School District owes a penalty of \$415,925.40 for non-compliance with §165.016 RSMo. during the 1995-96 school year that was payable in the 1997-98 school year and a penalty of \$390,812.16 for non-compliance with §165.016 RSMo. during the 1996-97 school year that was payable in the 1998-99

school year. This Court should further find that the Normandy School District has not been statutorily notified of non-compliance as required by §165.016.6.

III.

THE TRIAL COURT ERRED IN FINDING THAT ANY PENALTY OWED BY THE NORMANDY SCHOOL DISTRICT WAS TO BE PAID ON A PER CAPITA BASIS TO EVERY CERTIFICATED TEACHER AND BUILDING-LEVEL ADMINISTRATOR WHO WORKED FOR THE DISTRICT DURING THE YEARS THE PENALTIES WOULD HAVE BEEN PAID IF THE DISTRICT HAD BEEN TIMELY INFORMED BY DESE THAT A PENALTY WAS REQUIRED BECAUSE THE NORMANDY SCHOOL DISTRICT PROPERLY PAID ANY PENALTY DUE CERTIFICATED TEACHERS BY INCREASING SALARIES IN AN AMOUNT IN EXCESS OF THE PENALTY DURING THE 2000-01 AND 2001-02 SCHOOL YEARS. NORMANDY SCHOOL DISTRICT PROPERLY USED THE “FIRE” METHOD TO SHOW COMPLIANCE WITH THE SALARY COMPLIANCE ACT.

A.

Normandy School District has complied with Section 165.016 RSMo. regarding payment of alleged penalties.

Should this Court determine that Normandy School District was not in compliance with Section 165.016 RSMo. during 1994-95, 1995-96 or 1997-98, the earliest any penalties could be assessed is 2000-01 school year, as explained above in Section II.B. The Circuit Court's order that the penalty should be paid on a per capita basis to teachers and building administrators working in the district during the years of alleged violation is not supported by statute or case law and is, at least, logically inconsistent with the holding in *Knob Noster (supra)*. Section 165.016.6 RSMo. states only that a school district not in compliance ". . . shall compensate the building-level administrative staff and nonadministrative certificated staff during the year following the notice of violation . . ." The Court in *Knob Noster Education Association v. Knob Noster R-VIII School District*, WD61093 (Mo.App.W.D. 2003) affirmed the trial court's decision that the Knob Noster School District "paid the penalty by giving certificated staff members a salary increase that was not required by law and that exceeded the penalty amount." The Court further found that "[t]here is no requirement in the statute [§165.016.6 RSMo.] that the District designate the penalty as such or form the intent to pay the penalty."

The Normandy School District has, since the 1999-00 school year, spent in excess of the required Base Year Percentages. In 1999-00, the District expended

\$341,094.82 over the \$28,409,547.43 required. In 2000-01, the District expended \$1,329,504.81 over the \$30,936,357.30 required. In 2001-02, the District expended \$1,737,293.52 over the \$32,262,671.89 required. In 2002-03, the District will expend \$4,256,018.00 over the \$33,413,818.00 required. Should the Court determine a penalty is owed by the Normandy School District, the District has expended well over the penalty amount.

B.

The Normandy School District properly used the “FIRE” method to show compliance with the Salary Compliance Act for the school years in question.

Section 165.016.3 RSMo. states that school districts should use the “fiscal instructional ratio of efficiency” or “FIRE”, beginning with the 1999-2000 school year to show compliance with the Salary Compliance Act. A district must maintain or increase its FIRE compared to its FIRE for the 1997-98 school year (§165.016.3(2)).

Respondents alleged in their Reply to Normandy School District’s Response to their Motion to Reopen Case that the “District’s Comptroller . . . confused the “FIRE” method of determining compliance with the traditional methods of determining compliance.” (Appendix, p. 510). For the years in which any alleged penalty would be payable, Section 165.016.3 RSMo. was in effect. That section

states:

Beginning with the 1999-2000 school year:

(1) As used in this subsection, “fiscal instructional ratio of efficiency” or “FIRE” means the quotient of the sum of the district’s current operating costs, as defined in section 163.011, RSMo, for all kindergarten through grade twelve direct instructional and direct pupil support service functions plus the costs of improvement of instruction and the cost of purchased services and supplies for operation of the facilities housing those programs, and excluding student activities, divided by the sum of the district’s current operating cost for kindergarten through grade twelve, plus all tuition revenue received from other districts minus all noncapital transportation and school safety and security costs;

(2) A school district shall show compliance with this section in school year 1998-99 and thereafter by the method described in subsections 1 and 2 of this section, or by maintaining or increasing its fiscal instructional ratio of efficiency compared to its FIRE for the 1997-98 base year.

The Court in *Knob Noster Education Association v. Knob Noster R-VIII School District*, WD61093 (Mo.App.W.D. 2003), addressed this issue. The Knob Noster Education Association argued that the penalty provision of Section 165.106 RSMo. had to be interpreted without the FIRE formula amendment. The *Knob Noster* Court disagreed. In this case, the school district owed a penalty for the 1996-97 school year that was due in the 1998-99 school year. The District complied with the statute by increasing its FIRE formula for the 1998-99 school year, giving the teachers a salary increase that exceeded the penalty amount. The Court found that the District satisfied the penalty. (*Id.*). Should the Court find that Normandy School District is liable for penalty payments as a result of non-compliance with the Salary Compliance Act, as discussed above, the District did not have notice of its violations until recently as a result of several court cases. Compliance should therefore be measured using the FIRE method, which is currently the method district's use to show compliance.

Based on the arguments presented, this Court should reverse the trial court's finding that any alleged penalty owed by the Normandy School District should be paid on a per capita basis, but rather find that salary increases provided by the District sufficiently satisfy the penalty provision of §165.016 RSMo.

IV.

THE TRIAL COURT ERRED IN FINDING NORMANDY SCHOOL DISTRICT WAS REQUIRED TO MAKE TAX WITHHOLDINGS, CONTRIBUTIONS TO THE PUBLIC SCHOOL RETIREMENT SYSTEM, AND PAY PRE-JUDGMENT INTEREST FOR EACH OF THE RECIPIENTS DESCRIBED ABOVE BECAUSE SECTION 165.016 RSMO DOES NOT REQUIRE A DISTRICT TO MAKE TAX WITHHOLDINGS, MAKE RETIREMENT CONTRIBUTIONS, OR PAY PRE-JUDGMENT INTEREST BASED ON THE PENALTY AMOUNT. IN ADDITION, THE TRIAL COURT INCORRECTLY ORDERED NORMANDY SCHOOL DISTRICT TO MAKE RESTITUTION TO INDIVIDUAL TEACHERS AND ADMINISTRATORS, CONTRARY TO THE SALARY COMPLIANCE ACT.

A.

Respondents are not entitled to tax withholdings, contributions to the Public School Retirement System and pre-judgment interest because these are remedies not prayed for in their Petition.

In their original Petition for Declaratory Judgment, Respondents' prayer did not include a claim that the Normandy School District make tax withholdings,

make contributions to the Public School Retirement System, or pay any pre-judgment interest for certain certificated employees of the District. (Appendix, p. 10).

The District filed a Motion to Dismiss Respondents' Petition for various reasons, one of which was that Respondents failed to state a claim upon which relief could be granted. (Appendix, p. 17). The District pointed out to the Court that while §165.016 RSMo. pertains to "expenditures", Respondents Petition alleged that the District's approved "budgets" were not in compliance with the statute (Appendix, p.49).

The Court verbally granted Respondents leave to amend their Petition to substitute the word "expenditure" for "budget" at the Motion for Summary Judgment argument. However, when filed, Respondents' First Amended Petition went beyond the Court's ruling by adding three paragraphs regarding notification by DESE of non-compliance and adding an additional prayer in each Count of their Petition to require the District to remit contribution to the Missouri Public Retirement System. (Appendix, p. 277). The District objected to Respondents' Motion for Leave to File the First Amended Petition, citing these discrepancies (Appendix, p. 287). The Circuit Court denied Respondents' Motion for Leave to File First Amended Petition "reflecting the Court's rulings at the prior summary

judgment argument” (Appendix, p. 308). Respondents’ Second Amended Petition for Declaratory Judgment complied with the Court’s ruling and only exchanged the word “expenditure” for the word “budget”. There is no request for contributions to the Public School Retirement System in Respondents’ Second Amended Petition (Appendix, p. 319).

The Circuit Court requested the parties file their Proposed Order and Judgment. Respondents again included several remedies not pled in their Petition. Not only did they include retirement contributions, which the Court had specifically disallowed previously, Respondents also included tax withholdings. The Circuit Court signed Respondents’ Proposed Order and Judgment without revision. The Circuit Court erred in including these unpleaded remedies in the Order and Judgment.

B.

No provision for pre-judgment interest is included in Section 165.016 RSMo. The Salary Compliance Act does not require penalties to be paid directly to certain certificated teachers and administrators.

Section 165.106.6 RSMo. does not require a school district to pay penalties directly to certificated teachers and building level administrators that were employees of a district during the year in which the violation occurred. To require

a district to do so would go beyond the scope of the Salary Compliance Act. In addition, Section 165.106.6 RSMo. only requires that the district pay 110% of the dollar amount required to bring the district into compliance with the Act in the year following notification of being in violation. No mention of “interest” is mentioned anywhere in the Salary Compliance Act.

At the time this matter was stayed by the Circuit Court, DESE had indicated to the Court that they considered the Normandy School District to be in compliance with the Salary Compliance Act for all years previous to that action (Appendix, p. 456). In addition, the Circuit Court’s order staying this matter stated that the case should be re-opened within 18 months (Appendix, p. 343). That order was entered on January 6, 2000. Respondents moved to reopen this case on September 25, 2002, more than 32 months after the Court’s order. Respondents cannot argue that the case was not ripe prior to this date because the same order states that the case is stayed “pending a final decision of the Missouri Court of Appeals in *Missouri National Education Association v. Missouri State Board of Education*, No. CV198-1227CC” (*Id.*) The Missouri Court of Appeals, Western District issued their decision in this matter on December 26, 2000 (See *Missouri National Education Association v. Missouri State Board of Education*, 34 S.W.3d 266 (Mo.App.W.D. 2000), more than 21 months before Respondents filed their

Motion to Reopen this matter. To award pre-judgment interest would be unfairly prejudicial to the Normandy School District because Respondents went well beyond the Circuit Court's order when staying this matter, causing the amount of pre-judgment interest, should this Court find such an award statutorily permissible, excessive.

The delay in reopening this matter is also significant when considering whether any alleged penalty should be paid directly to certificated teachers and building level administrators employed by the District in the year of the alleged violation. Because so much time has expired, finding those employees that are no longer employed by the District has become more difficult.

Courts have not interpreted Section 165.016.6 RSMo. to mean that penalties should be paid directly to those certain certificated employees with a district at the time of the violation. A district rarely has the exact same staff from one year to the next. However, the statute allows a penalty for a violation that occurred two school years prior to be paid by increasing compensation for only those employed during the year the penalty is paid. The *Knob Noster* Court held that a district complies with the Salary Compliance Act by increasing the FIRE formula, giving current teachers a salary increase that exceeds the penalty amount. *Knob Noster Education Association v. Knob Noster School District*, WD 61093 (Mo.App.W.D.,

2003).

Based on the arguments presented, this Court should reverse the trial court's finding that the Normandy School District is required to make tax withholdings and retirement contributions because these are remedies not properly prayed for by Respondents. In addition, this Court should reverse the trial court's finding that penalties should be paid directly to certain certificated teachers and administrators and that pre-judgment interest be awarded as contrary to the provisions included in §165.016 RSMo.

CONCLUSION

For the reasons set forth above, Appellants Normandy School District respectfully request this Court reverse the findings of the trial court and enter judgment in favor of Appellants.

Respectfully submitted,

**CROTZER, FORD, ORMSBY &
SCHRAEDER**

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CERTIFICATE OF COMPLIANCE WITH RULE 84.06

The undersigned certifies that:

- (1) this brief contains the information required by Rule 55.03;
- (2) this brief complies with the limitations contained in Rule 84.06(b);
- (3) there are 7,412 number of words in this brief;
- (4) there are 842 number of lines of monospaced type in this brief;
- (5) the floppy disk containing a copy of this brief filed contemporaneously herewith has been scanned for viruses and is virus free.

Cindy Reeds Ormsby, #50986

CERTIFICATE OF SERVICE

The undersigned certifies that two (2) copies of the foregoing document were mailed, postage prepaid, this ____ day of May, 2003, to Attorney for Respondents, Loretta K. Haggard, Schuchat, Cook and Werner, 1221 Locust Street, Second Floor, St. Louis, MO 63103.

Cindy Reeds Ormsby